REVIEWS.

A TREATISE ON THE LAW OF QUASI-CONTRACTS. By William A. Keener. Baker, Voorhis, & Co. New York. pp. xxxii and 470.

Professor Keener has rendered a great service to the law and the legal profession in writing a book on quasi-contracts. So much confusion of thought, resulting in errors of decision, lurks in the term "contract" implied in law that the only possible way to satisfactory treatment of this branch of the law lies in ceasing to speak or think of such obligations as forming part of the law of contracts. In no other way will the dissimilarity of quasi-contracts from true contracts, and their similarity to constructive trusts, obtain recognition; and without recognition of this dissimilarity and similarity, correct reasoning on the cases is impossible. All this has been pointed out in recent years in a few scattered judicial opinions, articles in law reviews, and statements in books on various subjects; but the impression of the truth as yet made on the legal profession is slight. There is reason to hope that a text book wholly devoted to the subject, and discarding altogether both in the title and in the text the use of the word "contract" for an obligation imposed by law, will lead to a more general understanding of this difficult branch of the law.

Professor Keener's handling of his subject is thorough and careful. The book is evidently the result of long and careful study of the cases, and reflection on the principles underlying them. Doubtless because of the lack of systematic treatment of the subject, to which we have adverted, there has been scant discussion of the general principles governing the cases, which have been dealt with in groups by the courts, the relation of one group to the others not being generally observed. Professor Keener, following the division suggested by Professor Ames (The History of Assumpsit, 2 Harv. Law Rev. 53, 64), finds in the doctrine that no one shall be allowed to enrich himself unjustly at the expense of another, the general basis of recovery in quasi-contract in the great class of cases where the plaintiff's right is founded neither on a record, nor on a statutory, official, or customary duty. While the doctrine of unjust enrichment has not been acknowledged in terms to any great extent by the courts, we believe no one who examines the cases cited by Professor Keener can fail to admit that it furnishes the best key to the decisions. The author's endeavor is evidently to elucidate principles, not simply to compile a digest of decisions; and he does not hesitate to disagree with cases which he believes to be contrary to principle. An excellent illustration of this is his treatment of the doctrine that mistake of law gives no right of recovery. His statement of the development of the doctrine, showing the slight foundation on which it originally rested; his criticism of the doctrine; and his dealing with the question, What is a mistake of law, and what is a mistake of fact? are admirable. A careful reader might not wholly agree with a few of the author's conclusions; for instance, in regard to cases arising from payment of money under mistake as to the genuineness of negotiable instruments. The cases denying recovery to a drawee who has paid an innocent holder of a draft upon which the drawer's signature is forged seem adequately explained by the doctrine of equal equities, and the cases allowing recovery to a drawee

who has paid an innocent holder of a draft upon which an indorsement in the holder's chain of title is forged, seem sufficiently distinguished by the suggestion that the holder's right really arises from subrogation to the rights of the true owner. The ingenious case put on page 158 does not convince us that subrogation is not the true ground of recovery. If the question were fully argued, it is perhaps not certain that a recovery would be allowed, and if allowed, it would only indicate that the wife had a right, though deprived of a remedy for reasons of public policy, and that the drawee, not suffering under any difficulty as to remedy, was allowed to enforce the right. The direct enforcement of an equitable right as if it were a legal right is no novelty in the law of negotiable paper. Again, the criticism on page 38 of *Taylor* v. *Hare* and similar cases denying a recovery of license fees paid for the use of a patented invention on the patent proving invalid, does not seem to us merited. Every one who deals with patents knows the possibility of their being subsequently held invalid. It is something of which the licensee may fairly be said to run the risk. He prefers to pay a license fee rather than contest the patent, and he gets what he pays for. The case put by way of illustration on the same page of a man paying rent for his own land is obviously not in point. In that case the defendant is a disseisor, a tort-feasor, and is liable as such to account for the rents. The plaintiff is, therefore, entitled to recover the rents received by the defendant whether paid by himself or a third person.

But however we may differ occasionally from the author's views, we feel sure that no one can fail to admire the close, logical reasoning that supports them. We venture to predict that this book will be for many years the recognized authority on the subject with which it deals, and we shall be disappointed if it does not exert a noticeable influence towards uniformity of decision. S. W.

A TREATISE ON THE LAW OF INSURANCE (excepting Marine Insurance). By Arthur Biddle, M.A. Philadelphia: Kay and Brother, 1893. 2 vols. pp. civ, 649; 764.

This is a thorough, exhaustive, and well arranged and digested treatise upon its subject. Practically all decisions relevant to insurance are included; they are put where they belong, and a capacious index furnishes a ready guide. The arrangement, by its scientific classification of the subject, furnishes firm ground for the propositions advanced, and presents them in logical order. "Books," "Parts," "Chapters," "Divisions," and "Sections" bring one finally to the propositions determined by the cases. The order of the arrangement is that of time, and carefully follows out the course of the contract of insurance from its inception between the parties to the final verdict for damages.

The general practitioner and the insurance lawyer will find the book a very valuable aid in the labor of collecting and preparing authorities. But together with many of the text-books which daily come from the press, it has one serious fault. Beyond the orderly arrangement which leads a lawyer to the cases which he wishes, there is nothing. Little, if any, criticism of cases is inserted, and upon the development of the law of insurance, its reason for being, and its possibilities, we are given no assistance. Cases contradictory in result are regularly condensed and put side by side in the text without a suggestion that either is wrong, or an